**Carpenters District Council of Milwaukee County and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO *and* Pabst Brewing Company and District No. 10 of the International Association of Machinists and Aerospace Workers, AFL-CIO.** Case 30-CD-90

March 31, 1981

## DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Pabst Brewing Company (herein called the Employer) on August 1, 1980, alleging that Carpenters District Council of Milwaukee County and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO (herein called the Carpenters), had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activities with an object of forcing or requiring the Employer to maintain the assignment of certain work to employees represented by it rather than to reassign such work to employees represented by District No. 10 of the International Association of Machinists and Aerospace Workers, AFL-CIO (herein called the Machinists).

Pursuant to notice, a hearing was held before Hearing Officer Catherine M. Roth on August 20, 1980, at Milwaukee, Wisconsin. All parties appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, all parties filed briefs.

The Board has reviewed the rulings of the Hearing Officer made at the hearing and finds that they are free from prejudicial error. The rulings are hereby affirmed. The Board has considered the entire record in this case and hereby makes the following findings:

### I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer is a Delaware corporation engaged in brewing beer and other malt beverages at its facilities located in Milwaukee, Wisconsin. During the past calendar year, a representative period, the Employer received gross revenues in excess of $500,000 in the course and conduct of its business and, during the same period, it sold and shipped goods and materials valued in excess of $50,000 directly to points outside the State of Wisconsin. Accordingly, we find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.

### II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that the Carpenters and Machinists are labor organizations within the meaning of Section 2(5) of the Act.

### III. THE DISPUTE

#### A. *Background and Facts*

For at least the past 20 years, the Employer has recognized and bargained with the Machinists and Carpenters, respectively, and has entered into a series of collective-bargaining agreements with each of those Unions. The current agreement with the Machinists is effective from August 5, 1978, to August 1, 1981, and the most recent agreement with the Carpenters is effective from October 1, 1978, to September 30, 1981.

In 1960, the Employer, the Machinists, and the Carpenters entered into an agreement, known as the 1960 Job Assignment Agreement, which provides for the assignment of certain work to employees represented by the Machinists and the assignment of certain other work to millwrights represented by the Carpenters. The terms of this agreement became effective on October 3, 1960, and there is no showing that there have been any agreements, written or oral, since that date which modify or alter those terms.

Items 6 and 22 of the aforementioned 1960 agreement provide that fans, blowers, and all conveyors, except table top chains, come within the work jurisdiction of the millwrights represented by the Carpenters. Item 5 of this agreement provides that all vacuum pumps and positive displacement blowers fall within the jurisdiction of employees represented by the Machinists.

In 1965, the Employer acquired the first of several "J-N-J" and "Standard Knapp" Automatic Flap Openers whose purpose was to open the flaps of beer cartons, allowing the removal of bottles for washing.[1] These flap openers operated by means of suction cups attached to movable manifolds that followed the cartons and opened the flaps. The operation of these original units was slow and resulted in numerous delays caused by mechanical malfunctions. Their maintenance was assigned to employees represented by the Machinists.

In early 1978, the Employer decided to replace these units with a new style flap opener manufactured by the Hytrol Company. Called the Hytrol Automatic Flap Opener, this flap opener unit consists, *inter alia*, of a section of belt case conveyor over which is installed a high efficiency air blower or fan and duct system connected to a sheet metal

[1] Prior to 1965, the flaps of beer cartons were opened by hand.

shroud. The shroud is positioned just above the cases coming through on the belt. In operation, the Hytrol unit functions like a vacuum cleaner. As the case passes under the shroud, the case flaps are sucked up and the case is laid open by rollers and flap guides, which are also part of the Hytrol unit. In contrast to the original mechanical operation, this unit requires no complex timing or moving parts except the blower. It is more efficient, moves cases along at a faster speed, and malfunctions less frequently.

The work of installing and maintaining the Hytrol unit was assigned by the Employer to millwrights represented by the Carpenters. This assignment was still in effect at the time of the hearing. The Employer now has these units on all of its returnable bottle lines at this facility (a total of five such units).[2]

On January 4, 1978, the Machinists, in an attempt to secure an award that would change that work assignment, filed a grievance which was denied by the Employer on January 13, 1978. Thereafter the Machinists took the matter to arbitration, and, on June 7, 1978, a hearing before an arbitrator was commenced between the Employer and the Machinists but was recessed, without any ruling being made, to enable the parties to try and resolve the issue between themselves. On July 23, 1980, the Employer advised the arbitrator that it was the wish of both the Machinists and itself that the hearing be resumed, and he was requested to provide dates for the resumption of the arbitration.

At the hearing herein, the parties stipulated that on or about August 1, 1980, the Carpenters threatened the Employer that it would engage in a work stoppage if the Company went to arbitration with the Machinists over the assignment of the installation and maintenance of the Hytrol unit, or if that work were reassigned to the Machinists.[3]

### B. *The Work in Dispute*

The work in dispute is the installation and maintenance of the Hytrol Automatic Flap Opener units at the Employer's Milwaukee, Wisconsin, operation.

### C. *The Contentions of the Parties*

The Employer asserts that the main reason for its work assignment is that a majority of basic components in the Hytrol unit are traditionally within the jurisdiction of the millwrights. The Employer further states that it is its preference that the disputed work remain with the millwrights in view of the 1960 Job Assignment Agreement, past practice in assignment of this type of work, and the desire to avoid split craft jurisdiction.

The Carpenters contends that the evidence supports the Employer's assignment and that the Employer and Carpenters are complying with the 1960 Job Assignment Agreement.

The Machinists asserts that the dispute is not properly before the Board under Section 10(k) because the testimony showed the strike threat to be over the fact that arbitration was going to begin and not over the assignment of work; that if the matter were properly before the Board, however, then the work in dispute belongs to the Machinists, who, up to 1977, had exclusive jurisdiction over machinery that served the function of flap openers, the function now being performed by the Hytrol unit. The Machinists also claims that, since there is uncontradicted testimony that the 1960 Job Assignment Agreement has not been followed over the years by the Employer, the mere fact that the flap opener machinery is not vacuum operated does not provide a valid reason for changing the Employer's jurisdiction over such equipment from machinists to millwrights.

### D. *Applicability of the Statute*

Before the Board may proceed to a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that (1) there is reasonable cause to believe that Section 8(b)(4)(D) has been violated, and (2) the parties have not agreed upon a method for voluntary settlement of the dispute.

With respect to (1), above, the record discloses that the Employer began in early 1978 to assign the work in dispute to millwrights represented by the Carpenters. The Machinists on January 4, 1978, filed a grievance contesting the assignment. Following the Employer's denial of the grievance the Machinists sought arbitration. Thereafter, on August 1, 1980, the Carpenters threatened a work stoppage in the event that the Employer submitted the work assignment issue to arbitration or if the work were reassigned to the Machinists. It is well established that when a union threatens a work stoppage in the event the employer submits that union's work assignment to arbitration with another union, or threatens to strike if the work is reassigned, there is reasonable cause to believe that Section 8(b)(4)(D) has been violated.[4] According-

[2] The initial installation occurred in early 1978, two additional units were placed in the spring of 1978, and the final two, early in 1979.

[3] Gary Lewitzke, the Employer's industrial relations manager, also testified to these events.

[4] See, e.g., *International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada (Metromedia, Inc.)*, 225 NLRB 785, 787 (1976); *Albany Printing Pressmen and Assistants' Union No. 23, AFL-CIO (Williams Press, Inc.)*, 166 NLRB 693,

*Continued*

ly, we find that a jurisdictional dispute exists in this case and that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated by the Carpenters' conduct in furtherance of its claim to the disputed work.

With respect to (2), above, the record shows that the Carpenters is not a party to the bipartite arbitration proceeding initiated by the Machinists with the Employer; nor is there evidence that the disputants in this case are parties to any tripartite procedure which could result in a binding determination of the instant controversy. Furthermore, the parties stipulated, and we find, that there exists no agreed-upon method for the voluntary settlement of the dispute. Accordingly, we find that this dispute is properly before the Board for determination under Section 10(k) of the Act.

### E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of the disputed work after giving due consideration to various factors.[5] The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.[6]

The following factors are relevant in making a determination of the dispute before us:

#### 1. Employer's past practice

The Hytrol unit performs the same function, opening flaps, as the earlier unit it replaced. These earlier units were assigned to the machinists for maintenance. However, as discussed above, the Hytrol unit performs this function by a much different method. Thus the old units used suction cups attached to movable manifolds that followed the cartons and opened the flaps. The Hytrol uses a blower or fan to create a suction which opens the flaps. Millwrights, with some limited deviation[7] and one exception, have performed all of the maintenance work on fans and blowers located in the Employer's bottle house. The exception involves the work performed in connection with the maintenance on positive displacement blowers which are pumps used to move materials rather than air. That work is assigned to machinists apparently in accordance with the 1960 agreement.

Weighing in favor of an award of the disputed work to machinists is that they maintained the flap opening units replaced by the Hytrol unit. On the other hand, weighing in favor of an award of such work to millwrights is that the Hytrol unit radically differs from the units it replaces in the method it uses to perform the same function and, more significantly, in its mechanical components consisting of a fan and ducts, a conveyor belt and drive, rollers, and flap guides. Of these components, only the flap guides are common to both flap opener units that the Employer has utilized. The Employer claims that, in assigning the disputed work to millwrights, it relied heavily on the fact that the work of maintaining conveyor belts, rollers, fans, and ducts traditionally has fallen within their jurisdiction in accordance with the terms of the parties' 1960 agreement. These reasons for the assignment, the difference in operation and components of the former flap opener unit and the Hytrol unit, plus the fact that the evidence here tends to indicate that the Employer's practice has been to assign maintenance work based on the kind of machinery used rather than its function lead us to find that this factor favors an assignment of the work to millwrights represented by the Carpenters.

#### 2. The Employer's preference

The Employer, in early 1978, made an assignment of the work in dispute to the millwrights represented by the Carpenters, and states that it prefers such an assignment. We find that the Employer's assignment of the disputed work to the millwrights, consistent with its preference, is a factor favoring an award to millwrights represented by the Carpenters.

#### 3. Agreements

The 1960 Job Assignment Agreement[8] does not deal with flap opener units specifically, since they were not in use at the time. However, the parties did mutually agree, *inter alia*, that: (1) the millwrights would maintain all fans, blowers, and conveyors, except table top chains; and (2) the employees represented by the Machinists would main-

695 (1967); *New York Typographical Union No. 6, International Typographical Union, AFL-CIO (New York Times Company)*, 225 NLRB 1311, 1313 (1976); *Local 210, Laborers International Union of North America, AFL-CIO (The Edward J. Debartolo Corporation)*, 194 NLRB 655, 657 (1971).

[5] *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO [Columbia Broadcasting System]*, 364 U.S. 573 (1961).

[6] *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402, 1410-11 (1962).

[7] These deviations apparently do not involve the machinists to any significant extent, if at all.

[8] The Machinists asserts that the uncontradicted evidence indicates that the 1960 agreement has not been followed over the years by the Employer. A business representative for the Machinists did testify that Gary Lewitzke, Employer's industrial relations manager, had told him that there had been deviations from the agreement. Lewitzke heard that testimony and in his subsequent testimony was not asked about the subject. The mere fact that there may have been deviations from the 1960 agreement is insufficient to warrant a finding that the agreement is not binding on the parties.

tain all vacuum pumps and positive displacement blowers.

The maintenance of the replaced flap openers was assigned to the employees represented by the Machinists because those units were operated by means of suction cups that attached to and opened the flaps. However, the Hytrol unit, as noted above, consists of fans or blowers, conveyor belts, and rollers which, under the 1960 agreement, are the jurisdiction of the millwrights. Therefore, we find that the 1960 Job Assignment Agreement favors giving the disputed work to millwrights represented by the Carpenters because, with the installation of the Hytrol units, the operational method of the Employer's machinery functioning as flap openers has substantially changed.

As to the current collective-bargaining agreements, while the Employer's respective contracts with the Carpenters and the Machinists both include some references to jurisdiction, neither agreement contains anything specific enough to be useful in resolving the instant work dispute. We find this factor, therefore, favors neither group.

4. Employee skills

The record shows that both groups of employees possess the necessary skills to perform the work in dispute and both groups could perform it with equal efficiency.

5. Economy and efficiency of operations

The Employer asserts that by assigning the disputed work to the millwrights it avoided a split in craft jurisdiction. While it does not state exactly how the jurisdiction would be split if the work were assigned to the machinists, we know that the Hytrol unit consists, *inter alia*, of a conveyor belt and fan system and that under the 1960 Job Assignment Agreement the maintenance of conveyors and fans has been assigned to the millwrights. Arguably, the basis for the Employer's assertion is that an assignment of the disputed work to the machinists would entail a splitting of the work jurisdiction over that equipment. However, the record is not sufficiently developed in this regard to enable us to determine if this is what the Employer means by its assertion. In any event, it is not evident from the record that an assignment of the work in dispute to one group of employees rather than the other would be more economical or efficient. Therefore, we find this factor favors neither group of employees.[9]

6. Job impact

The Employer states that the assignment of the work in dispute will not affect the manpower requirements of either craft. Therefore, we find that this factor favors neither group of employees.

7. Industry practice

The Machinists business representative, Thomas N. Leach, testified that both the Miller and Schlitz breweries in the Milwaukee area use Hytrol units and that those units are maintained by employees represented by the Machinists. He also testified that no millwrights are employed at Miller, while Schlitz employs approximately two or three. He agreed that all three breweries are unique in their policies as to jurisdiction assignment. Consequently, we find this evidence insufficient to establish a practice in the industry. Therefore, this factor favors neither group of employees.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors, we conclude that the millwrights represented by the Carpenters are entitled to perform the work in dispute. We reach this conclusion based primarily on the Employer's preference which is consistent with its assignment practices and the 1960 Job Assignment Agreement between the Employer, the Carpenters, and the Machinists. In making this determination, we are awarding the work in dispute to those millwrights represented by the Carpenters, but not to that Union or its members. The present determination is limited to the particular controversy which gave rise to this proceeding.

## DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board hereby makes the following Determination of Dispute.

Employees of Pabst Brewing Company who are represented by Carpenters District Council of Milwaukee County and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, are entitled to perform the installation and maintenance of the Hytrol Automatic Flap Opener units, at the Milwaukee, Wisconsin, facility of the Pabst Brewing Company.

[9] Empl. Exh. 9 indicates that the specific hourly wages of employees to be assigned the work in dispute was a factor for its consideration in the determination of its assignment. However, it is the Board's practice not to rely on the differing rates of pay of employees in determining a jurisdictional dispute and, therefore, we have not based our decision herein on the relative wage rates of either millwright or machinist personnel. *United Brotherhood of Carpenters and Joiners of America, Local No. 171, AFL-CIO (Knowlton Construction Corporation)*, 207 NLRB 406, 409 (1973).